

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

\*\*\* FILED \*\*\*  
01/09/2002

01/04/2002

CLERK OF THE COURT  
FORM R000A

HON. MICHAEL O. WILKINSON

S. Mena  
Deputy

CR 1997-009340

FILED: \_\_\_\_\_

STATE OF ARIZONA

MARIA Y ARMIJO  
JEANNETTE GALLAGHER

v.

TONATIHU AGUILAR

BRUCE E BLUMBERG  
ROBERT L STORRS

APPEALS-CCC  
DISPOSITION CLERK-CCC  
VICTIM WITNESS DIV-AG-CCC

**SPECIAL VERDICT**

On March 8 of 2001, Defendant was found guilty by the Jury of Count II, Murder in the First Degree, October 15, 1996 in the death of Sandra Imperial. On October 25, 2001, October 26, 2001, and November 30, 2001 this Court conducted a hearing pursuant to ARS § 13-703. The Court makes the following findings:

1. The State has proven beyond a reasonable doubt the existence of two aggravating factors.

First, they have proven the aggravating factor ARS § 13-703(F)(6). The Court finds that the killing of Sandra Imperial was especially cruel based on the circumstances of its commission. The undisputed testimony is that Sandra Imperial cowered on the floor begging for her life while the Defendant stood over her. This was done in front of her six-year-old son, Hector Imperial Jr. The extreme suffering that she was put through during those moments represent mental and physical

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anguish that is "especially cruel". (See State vs. Trostle, 191 Arizona 4, 951 P 2<sup>nd</sup> 869 (1997)).

Secondly, the State has proven beyond a reasonable doubt ARS § 13-703 (F)(8). This aggravating factor relates to the conviction by the jury on the killing of Hector Imperial, represented in Count I. The verdict of Murder in the Second Degree meets the standard of this aggravating factor.

The State also sought to prove as an aggravating factor ARS § 13-703(F)(5). This "Pecuniary Gain" aggravating circumstance is most recently discussed in State vs. Sansing, 351 Arizona Advance Reports 3 (2001). The Court must be able to find beyond a reasonable doubt that pecuniary gain was a motive, cause, or impetus for the murder and not merely the result of the murder. The Court is unable to make such a finding in this case.

2. The Defendant has proven by a preponderance of the evidence two statutory mitigating factors.

First, the Defense has proven the mitigating factor ARS §13-703 (G)(1). This mitigating factor exists when the Defendant's capacity to appreciate the wrongfulness of his conduct or conform his conduct to requirements of law is significantly impaired but not so impaired as to constitute a defense.

The Defendant presented testimony from Dr. Mark Walter, PHD and Dr. Carlos Jones, M.D. When taken as a whole, their testimony clearly proves by a preponderance of the evidence that the Defendant suffered from some diminished capacity to appreciate the wrongfulness of his conduct and to conform his conduct to societal norms. Dr. Walter testified to findings consistent with brain damage, such that the Defendant was "substantially impaired" at the time of the shooting. Dr. Jones testified that at the time of the shooting, the Defendant suffered from a mental disorder that he diagnosed as "inhalant induced psychotic disorder".

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The Defendant has also proven by a preponderance of the evidence statutory mitigating factor ARS § 13-703(G)(5). On the date of the murder, Defendant's chronological age was 16 years, 8 months. While chronological age is not solely determinative of this mitigating factor, the testimony of Drs. Walter and Jones supplements the pertinent information regarding chronological age. Their testimony was of an individual with a significant lack of intelligence and maturity.

The Court does not find the existence of any other statutory mitigating factors. In addition, the Court has looked for and not found any non-statutory mitigating factors.

The Court finds that the mitigating factors are sufficient to call for leniency.